

## **EXHIBT A**

**Service of Process  
Transmittal**

02/21/2018

CT Log Number 532835836

**TO:** Jacqueline Studer  
IDEXX Laboratories, Inc.  
1 Idexx Dr  
Westbrook, ME 04092-2041

**RE: Process Served in Texas**

**FOR:** IDEXX Laboratories, Inc. (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** The Board of Regents of The University of Texas System, Pltf. vs. IDEXX Laboratories, Inc., Dft.

**DOCUMENT(S) SERVED:** Citation, Petition

**COURT/AGENCY:** 189th Judicial District Court, Harris County, TX  
Case # 201808064

**NATURE OF ACTION:** IDEXX has not made payment for the just amount owed the Board

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Dallas, TX

**DATE AND HOUR OF SERVICE:** By Process Server on 02/21/2018 at 14:10

**JURISDICTION SERVED :** Texas

**APPEARANCE OR ANSWER DUE:** By 10:00 a.m. on the Monday next following the expiration of 20 days after service (Document(s) may contain additional answer dates)

**ATTORNEY(S) / SENDER(S):** J. Hoke Peacock III  
SUSMAN GODFREY L.L.P.  
1000 Louisiana Street, Suite 5100  
Houston, TX 77002  
713-651-9366

**ACTION ITEMS:** SOP Papers with Transmittal, via UPS Next Day Air , 1ZX212780109147418  
Image SOP  
Email Notification, Lily Lu Lily-Lu@idexx.com  
Email Notification, Deborah Frank Deborah-Frank@idexx.com  
Email Notification, Brandi Peterson Brandi-Peterson@idexx.com

**SIGNED:** C T Corporation System  
**ADDRESS:** 1999 Bryan Street  
Suite 900  
Dallas, TX 75201  
**TELEPHONE:** 214-932-3601

RECEIPT NUMBER 0.00

TRACKING NUMBER 73460693 ATY

CAUSE NUMBER 201808064

PLAINTIFF: BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM  
vs.  
DEFENDANT: IDEXX LABORATORIES INC

In The 189th  
Judicial District Court of  
Harris County, Texas

CITATION CORPORATE

THE STATE OF TEXAS  
County of Harris

DELIVERED THIS 21 DAY OF Feb 2018

AT: 2:10 AM/PM

BY:

PROFESSIONAL CIVIL PROCESS

INITIALS: LIC# 12051

TO: IDEXX LABORATORIES INC (DELAWARE CORPORATION) MAY BE SERVED WITH  
PROCESS BY SERVING ITS REGISTERED AGENT CT CORPORATION SYSTEM  
1999 BRYAN STREET SUITE 900 DALLAS TX 75201

Attached is a copy of PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE.

This instrument was filed on the 6th day of February, 2018, in the  
above cited cause number and court. The instrument attached describes the claim against you.

**YOU HAVE BEEN SUED;** you may employ an attorney. If you or your attorney do not file a written answer with the  
District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were  
served this citation and petition, a default judgment may be taken against you.

**TO OFFICER SERVING:**

This Citation was issued under my hand and seal of said Court, at Houston, Texas, this 7th day of  
February, 2018.

Issued at request of:  
PEACOCK, JAMES HOKE III  
1000 LOUISIANA ST, SUITE 5100



Chris Daniel  
CHRIS DANIEL, District Clerk  
Harris County, Texas  
201 Caroline, Houston, Texas 77002  
P.O. Box 4651, Houston, Texas 77210

Generated by: ELDRIDGE, WALTER F J8P//10876972

HOUSTON, TX 77002  
TEL: (713) 651-9366  
Bar Number: 15673980

**OFFICER/AUTHORIZED PERSON RETURN**

I received this citation on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_M., endorsed

the date of delivery thereon, and executed it at \_\_\_\_\_

(STREET ADDRESS)

(CITY)

in \_\_\_\_\_ County, Texas on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_M.,

by delivering to \_\_\_\_\_

(THE DEFENDANT CORPORATION NAMED IN CITATION)

\_\_\_\_\_, in person, whose name is \_\_\_\_\_

(REGISTERED AGENT, PRESIDENT, or VICE-PRESIDENT)

a true copy of this citation, with a copy of the \_\_\_\_\_ Petition attached,

(DESCRIPTION OF PETITION, I.E., "PLAINTIFF'S ORIGINAL")

and with accompanying copies of \_\_\_\_\_

(ADDITIONAL DOCUMENTS, IF ANY, DELIVERED WITH THE PETITION)

I certify that the facts stated in this return are true by my signature below on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

FEE: \$ \_\_\_\_\_

By: \_\_\_\_\_  
(SIGNATURE OF OFFICER)

Printed Name: \_\_\_\_\_

Affiant Other Than Officer

As Deputy for: \_\_\_\_\_  
(PRINTED NAME & TITLE OF SHERIFF OR CONSTABLE)

On this day, \_\_\_\_\_, known to me to be the person whose signature  
appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was  
executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Notary Public

2018-08064 / Court: 189

CAUSE NO. \_\_\_\_\_

The Board of Regents of  
The University of Texas System,

*Plaintiff,*

v.

IDEXX Laboratories, Inc.,

*Defendant.*

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HARRIS COUNTY, TEXAS

\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**  
**AND REQUEST FOR DISCLOSURE**

Plaintiff the Board of Regents of The University of Texas System ("Plaintiff" or "the Board") files this Original Petition against Defendant IDEXX Laboratories, Inc. ("Defendant" or "IDEXX"), and alleges as follows:

**I.**

**Discovery-Control Plan**

1. Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3 and affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because Plaintiff seeks monetary relief aggregating \$100,000 or more.

2. Plaintiff seeks monetary relief over \$1,000,000.

**II.**

**Parties**

3. Plaintiff is the Board of Regents of The University of Texas System, which was established for the purpose of governing The University of Texas System. The powers and duties of the Board are set forth generally in Chapter 65 of the Texas Education Code. The Board maintains its offices at 201 West 7th Street, Austin, Texas 78701.

4. Defendant IDEXX is a Delaware corporation having a place of business located at One IDEXX Drive, Westbrook, Maine 04092. IDEXX may be served with process by serving its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

### **III. Jurisdiction**

5. The Court has subject matter jurisdiction over the lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements. *See* Tex. Gov't Code § 24.007.

6. The Court has personal jurisdiction over IDEXX because IDEXX purposefully availed itself of the privileges and benefits of conducting business in Texas. In particular, IDEXX has placed its products into the stream of commerce in Texas, has directed marketing and sales of those products in Texas to Texas customers, has established regular channels of communication with Texas customers, and has engaged in other profit making activities in Texas. Upon information and belief, IDEXX operates at least one reference laboratory or testing facility in Texas. IDEXX has entered into multiple contracts with Texas entities, including the Board and The University of Texas System and its constituent institutions and entities.

7. Moreover, IDEXX's liability arises out of its activity within Texas—specifically, the breach of its September 30, 2000 exclusive license with the Board regarding certain intellectual property owned by the Board. Even IDEXX's acts outside of Texas, including its decision to breach its agreement with the Board by underpaying royalties, had reasonably foreseeable consequences in Texas.

**IV.  
Venue**

8. Venue is proper in Harris County under Texas Civil Practice & Remedies Code § 15.002(a)(1) because all or a substantial part of the events or omissions giving rise to the claim occurred in Harris County.

**V.  
Facts**

9. On September 30, 2000, the Board and IDEXX entered into a license agreement ("Agreement") related to patented technology owned by the Board. That patented technology relates to the diagnosis, prophylaxis, and treatment of Lyme disease. The Agreement granted IDEXX a world-wide, royalty-bearing, exclusive license to manufacture, have manufactured, use, distribute, Sell, offer to Sell, import, lease, loan or otherwise commercialize certain Licensed Products.

10. The Agreement, attached as Exhibit 1, provides for a multi-tiered royalty structure based on the type of Licensed Product (e.g., diagnostic test) sold by IDEXX. Section 5.1(b) of the Agreement provides for a running royalty rate as follows:

i. Four percent (4.0%) of Net Sales for all Licensed Products Sold to detect Lyme disease alone.

ii. One percent (1.0%) of Net Sales for all Licensed Products Sold to detect Lyme disease in combination with one other veterinary diagnostic test or service (for example, but not limited to, a canine heartworm diagnostic test or service). Such royalty rate shall be reduced by a percentage rate equal to the percentage rate paid to a third party, other than sublicensees and Affiliates, for products or components used by IDEXX exclusively in the production or Sale of the Licensed Product. However, the total reduction of the royalty rate shall not exceed one-half percent (0.5%).

iii. Two and one-half percent (2.5%) of Net Sales for all Licensed Products Sold as a product or service to detect Lyme disease in combination with one or more veterinary diagnostic products or services to detect tick-borne disease(s).

11. IDEXX sells Licensed Products known as SNAP tests. SNAP tests are combination tests that include at least three tests: (1) the C6 Quant test for Lyme disease, which is a "Licensed Product" under the Agreement, (2) a heartworm test, and (3) at least one test for another tick-borne disease. Thus, under § 5.1(b)(iii) of the Agreement, IDEXX should pay 2.5% of Net Sales of the SNAP combination tests. IDEXX began paying royalties under the Agreement in April 2004. Since that time, however, IDEXX has paid 0.5% of Net Sales of the SNAP combination tests. In breach of the Agreement, IDEXX did not pay 2.5% of Net Sales of the SNAP combination test products, which include one or more other tests to detect tick-borne diseases. This breach resulted in underpayment of royalties under the Agreement.

12. Further, Section 5.1(b) of the Agreement states that the 4%, 1% (with a possible reduction to 0.5%), and 2.5% royalties apply to Net Sales of Licensed Products. In calculating royalties owed under the Agreement, IDEXX improperly used an allocation factor of the standard cost of each test used in the combination product, and then applied the royalty to the allocated cost. The Agreement does not provide for this reduction in royalty base. Accordingly, IDEXX's use of this allocation factor violated the Agreement and resulted in underpayment of royalties.

## **VI. Causes of Action**

### **Count One: Breach of Contract**

13. The Board incorporates and adopts the facts and allegations set forth in the preceding paragraphs.

14. The Agreement is a valid and enforceable contract governed by Texas law.

15. The Board is a proper party to sue for IDEXX's breach of the Agreement.

16. The Board performed and tendered performance of its contractual obligations under the Agreement.

17. IDEXX breached the Agreement by underpaying royalties owed under the Agreement. Specifically, IDEXX paid 0.5% of Net Sales instead of 2.5% of Net Sales. IDEXX should have paid 2.5% of Net Sales under §5.1(b)(iii) of the Agreement on SNAP products or services to detect Lyme disease in combination with one or more veterinary diagnostic products or services to detect tick-borne disease(s). The Agreement unambiguously states that products and services testing for Lyme disease and another tick-borne disease bear a royalty of 2.5% of Net Sales.

18. IDEXX further breached the Agreement by improperly using an allocation factor of the standard cost of each test used in the combination product, and then applying the royalty to the allocated cost. The Agreement does not provide for this reduction in royalty base. Accordingly, IDEXX's use of this allocation factor violated the Agreement and resulted in additional underpayment of royalties.

19. IDEXX's breaches caused the Board monetary injury in the form of underpayment of royalties.

20. Additionally, under §5.6 of the Agreement, the Board is entitled to interest on IDEXX's unpaid and underpaid royalties.

#### **VII. Jury Demand**

21. The Board demands a jury trial and tenders the appropriate fee with this petition.

#### **VIII. Conditions Precedent**

22. All conditions precedent to the Board's claims for relief have been performed or have occurred.



23. Based on the foregoing conduct, the Board was forced to engage attorneys to represent them.

24. The Board is in the process of presenting the foregoing claims to IDEXX or its duly authorized agents.

25. IDEXX has not made payment for the just amount owed the Board.

26. The Board is entitled to recover reasonable and necessary attorney fees under Texas Civil Practice & Remedies Code Chapter 38 because this suit is for breach of a written contract.

**IX.  
Request for Disclosure**

27. Under Texas Rule of Civil Procedure 194, the Board requests that IDEXX disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

**X.  
Prayer for Relief**

28. The Board asks that the Court issue citation for IDEXX to appear and answer, and that the Board be awarded a judgment against IDEXX for the following:

- a. Actual damages, including but not limited to the underpayment of royalties as well as interest as set forth in the Agreement;
- b. Prejudgment and post-judgment interest;
- c. Court costs;
- d. Reasonable and necessary attorney's fees; and
- e. All other relief to which it is entitled.

Dated: February 6, 2018

Respectfully submitted,

**SUSMAN GODFREY L.L.P.**

By: /s/ J. Hoke Peacock III

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